

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**Lucinda R. Callendar, Ph.D.,**

*Plaintiff,*

v.

**Case No. 3:07-cv-208  
Judge Thomas M. Rose**

**Wilberforce University, Dr. Floyd Flake,**

*Defendants.*

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**ENTRY AND ORDER DENYING WITHOUT PREJUDICE TO REFILING  
DEFENDANTS' MOTION TO DISMISS, DOC. 7.**

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This matter is before the Court for decision on Co-Defendants Wilberforce University and Dr. Floyd Flake's Motion to Dismiss Plaintiff's Complaint. (Doc. 7.) Therein, Defendants assert that Plaintiff's complaint should be dismissed, as, they claim, all of her causes of action are preempted by the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185. Defendants have referred the Court to a motion filed by Plaintiff's attorney on behalf of the Defendant in *Wilberforce University v. Wilberforce University Faculty Association*, 3:06-cv-291 (S.D. Ohio). Attached to docket entry 9 in that case are a Collective Bargaining Agreement and an Arbitrator's Award that would lead one to conclude that the first and third causes of action in this case are, indeed, preempted by the LMRA. Because that document was not filed by either party in this case, the Court, out of a superabundance of caution, declines to recognize it here unless attached and properly affied to here. As for Plaintiff's second cause of action, Defendants err in calling it a claim

for breach of contract, as it asserts intentional infliction of emotional distress. Wherefore, Defendants' Motion to Dismiss is **DENIED WITHOUT PREJUDICE TO REFILING**.

**DONE** and **ORDERED** in Dayton, Ohio, on Tuesday, September 11, 2007.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE